



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 5, 1991

Ms. Georgia Flint
Acting Commissioner
Texas Department of Insurance
P. O. Box 149104
Austin, Texas 78714-9104

OR91-625

Dear Commissioner Flint:

Your predecessor in office asked whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 14097.

The Texas Department of Insurance (the department) has received a request for information relating to a pending investigation of certain individuals and insurance companies. Specifically, the requestor seeks "any and all documents or other records involving any investigation or examination by the Texas Board of Insurance of [the individual and company under investigation]." The department advises us that the requested information relates to an ongoing investigation which you anticipate "will culminate in an administrative contested case with the named company and individuals as parties." The department claims that the requested information is thus excepted from required public disclosure by section 3(a)(3). The department also claims that some of the requested information is excepted from required public disclosure by the attorney-client privilege, as incorporated by sections 3(a)(1) and 3(a)(7) into the Open Records Act, and by section 3(a)(11).

Previous open records decisions issued by this office resolve your request. Open Records Decision No. 551 (1990) held that a section 3(a)(3) exception is applicable only when litigation is pending or reasonably may be anticipated and if the requested information relates to that litigation. Parties to a lawsuit must obtain relevant information through the normal process of discovery. *Id.* We are advised

that a contested administrative case will result from the department's investigation. Open Records Decision No. 368 (1983) held that "the litigation exception may be applied to records relating to a contested case before an administrative agency." Additionally, the department has demonstrated that the requested information relates to the anticipated litigation. Accordingly, unless the information requested already has been disclosed through the discovery process or by court order, you may withhold the information under section 3(a)(3). Please note that this ruling applies only for the duration of the litigation and to the information at issue here. As we resolve your predecessor's request under section 3(a)(3), we need not address the applicability of sections 3(a)(1), 3(a)(7), and 3(a)(11) at this time.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR91-625.

Yours very truly,



Kym Oltrogge
Assistant Attorney General
Opinion Committee

KO/GK/lcd

Ref.: ID#s 14097, 14223

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